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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**04/26/00**	Bill No:	**SB 2174**
Tax:	**Sales and Use**	Author:	**Senate Revenue and Taxation Committee**
Board Position:	**Board-sponsored - Support**	Related Bills:	**AB 2894 (Knox, et al)**

BILL SUMMARY:

This bill contains Board of Equalization-sponsored proposals that would accomplish the following:

1. Authorize the Board to prescribe a method to authenticate electronic returns and applications filed with the Board (§§6066, 6452, and 6479.31).
2. Make technical changes to conflicting laws providing a sales and use tax exemption for the sale or lease of aircraft by air common carriers (§§6366 and 6366.1).
3. Provide an exemption from the prepayment of sales tax on motor vehicle fuel if the gasoline is sold pursuant to a contract with the State of California or its instrumentalities (§6480.1).

SUMMARY OF AMENDMENTS:

The provisions that would have granted the Board of Equalization the authority to settle tax disputes totaling less than $5,000 for Sales and Use Tax and Special Taxes and Fees administered by the Board were removed from the bill.

ANALYSIS:

<u>Sections 6066, 6452, 6479.31</u>

<u>Current Law:</u>

Under existing law, every person desiring to engage in or conduct business as a seller within this state shall file an application for a permit for each place of business. Current law also requires that, in addition to including various information about the seller, the application must be *signed* by the owner, partner, member, or executive officer.

For purposes of the sales tax, a return shall be filed by every seller and also by every person who is liable for the sales tax. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax.

Returns are required to be *signed* by the person required to file the return or by his or her duly authorized agent. Additionally, if a return is prepared by a paid preparer, that preparer is required to enter his or her name, social security number or federal employee identification number, and business name and address on the return. Any paid preparer who fails to provide the required information shall be subject to a fifty dollar ($50) fine for each failure to provide the required information.

Effective January 1, 2000, as a result of Board-sponsored legislation (SB 1302, Ch. 865, Stats. 1999), the Board is authorized to accept sales and use tax returns by electronic media. Any return filed by use of electronic media is not considered complete, and therefore, not considered filed, unless an electronic filing declaration is *signed* by the taxpayer.

Proposed Law:

This bill would:

- Remove the specific signature requirement for applications for a permit and allow the Board to prescribe the method of authenticating applications filed with the Board.
- Provide that sales and use tax returns filed electronically with the Board be authenticated in a manner prescribed by the Board rather than requiring the taxpayer to sign an electronic filing declaration.
- Remove the requirement that paid preparers provide information about themselves on the return and eliminate the fifty dollar ($50) penalty for failure to include such information.

Comments:

When a document, such as a permit application or tax return, is filed electronically rather than in a hard copy form, the issue of the required signature must be addressed. A signature is an authentication device, ordinarily a person's name written by himself or herself. Current law implies that this form of authentication is required on documents filed with the Board.

By allowing taxpayers to be authenticated by other means, rather than by a traditional signature, the Board will be better equipped to handle the acceptance of documents filed electronically. This will afford taxpayers and the Board the opportunity to take advantage of the many benefits of electronic filing, such as reduced processing costs for the Board and added convenience for taxpayers.

Allowing taxpayers to fill out an application for a permit and submit it electronically could simplify the application process for taxpayers. The simplified application process will benefit taxpayers by allowing them the opportunity to take advantage of new technologies. Additionally, simplifying the application process could potentially reduce incidents of retailers operating without the necessary permit.

In regard to the paid preparer issue, when a paid preparer is hired to prepare a tax return for a client, the paid preparer is required to furnish information identifying himself or herself. Paid preparers of sales and use tax returns have expressed concerns that this disclosure of their social security number or federal employer identification number exposes them to risk of credit card fraud or bank fraud. For example, if a taxpayer hires a paid preparer and pays for services with a check, the paid preparer will generally deposit the check into his or her own account. When the check is deposited, the account number is marked on the check for processing. If the taxpayer receives cancelled checks with the bank statement, the taxpayer will have access to the paid preparer's bank account number since it is now printed on the cancelled check. This information, accompanied by the paid preparer's social security number or federal employer identification number, is enough information to allow a person who obtained this information to attempt a fraudulent transfer of funds from the paid preparer's bank account or to apply for credit in the paid preparer's name. Further, although a paid preparer who fails to provide this information is subject to a fifty dollar ($50) fine, the Board has never imposed this fine on a paid preparer. These specific provisions are no longer necessary for the proper administration of the Sales and Use Tax Law.

Sections 6366 and 6366.1

Current Law:

Current law provides an exemption from tax for sales or leases of aircraft to common carriers, foreign governments, and nonresidents, provided certain requirements are met. Generally, Section 6366 provides the exemption for *sales* of aircraft. The exemption for *leases* of aircraft is generally provided by Section 6366.1.

To qualify for the exemption when an aircraft is sold or leased to a common carrier, certain gross receipts requirements must be met. Section 6366(b) provides a rebuttable presumption that for aircraft *sold* on or after January 1, 1997, a person is not engaged in business as a common carrier if the person's yearly gross receipts from the use of the aircraft as a common carrier does not exceed 20 percent of the purchase cost of the aircraft to him or her, or fifty thousand dollars ($50,000), whichever is less. Section 6366(c) provides the same rebuttable presumption for aircraft *leased* to common carriers, or sold for the purpose of *leasing* to common carriers.

Senate Bill 38 (Ch. 954 Stats. 1996) amended Section 6366(b) to raise the gross receipts requirements for sales of aircraft to common carriers from 10%/$25,000 to the current 20%/$50,000. Senate Bill 38 also added subdivision (c) to Section 6366 to provide for the gross receipts requirements for leases of aircraft to common carriers to be 20%/$50,000. However, Section 6366.1(c) also currently provides for the gross receipts requirement for leases of aircraft to common carriers to be 10%/$25,000.

Senate Bill 38 was intended to increase the rebuttable presumption for both sales and leases of aircraft used for common carrier purposes and also to add a "gross receipts" definition. However, the bill incorrectly added the provision regarding *leasing* to Section 6366(c), rather than amending Section 6366.1(c). Therefore, Section 6366(c) and Section 6366.1(c) apply to the same transactions, but are inconsistent with each other.

Proposed Law:

This bill would amend Sections 6366 and 6366.1 to delete the presumption provided for leases from Section 6366 and correctly add it to Section 6366.1.

Comments:

Currently, Section 6366(c) and Section 6366.1(c) apply to the same transactions, but are inconsistent with each other. This inconsistency creates confusion. A person seeking an exemption may mistakenly rely on the presumption level provided by section 6366.1(c) and overlook the proper presumption level provided by section 6366(c). This amendment would help clarify the law as it applies to sales and leases of aircraft to common carriers, as was intended by Senate Bill 38.

Section 6480.1

Current Law:

Under existing law, distributors and brokers of motor vehicle fuel (gasoline) are required to collect a prepayment of sales tax from the person to whom the motor vehicle fuel is transferred. When the person acquiring the motor vehicle fuel resells that fuel, the person is entitled to claim credit for the prepayment paid to the supplier on the return for the period in which the fuel is resold. The tax prepayment rate for gasoline is determined by the Board based upon 80% of the combined state and local tax rate multiplied by the arithmetic average selling price (excluding tax) of all grades of gasoline sold through self-service gasoline stations. The law provides that if the price of gasoline decreases or increases, and the established rate results in prepayments that consistently exceed or are significantly lower than the retailers' sales tax liability, the Board may readjust the rate.

Proposed Law:

This proposal would provide an exemption from these prepayment requirements if the gasoline sold is pursuant to a contract with the State of California or its instrumentalities.

Comments:

This issue was brought to the attention of the Board at the November 18, 1998 Business Taxpayers' Bill of Rights hearing by Ms. Severina Mazorra, representing Severina's Aviation and Fuel Service. In this particular case, Ms. Mazorra entered into contracts with the California Highway Patrol to furnish gasoline. When Ms. Mazorra acquired the fuel from her supplier, she was required to pay her supplier the sales tax prepayment, which is currently at the rate of 8 ½ cents per gallon. However, when the retail selling price of gasoline dropped, as was the case in 1998 and early 1999, her retail selling price of the gasoline to the CHP was significantly below the prepayment rate per gallon. Consequently, the sales tax prepayment paid to her supplier exceeded her sales tax liability on her sales to the CHP. As a result, over several quarters, Ms. Mazorra filed credit returns with the Board and had to wait for the Board to issue refunds for the overpayment – a situation that created significant hardship for this taxpayer.

This proposal would exempt state-contracted fuel from the prepayment requirements thereby eliminating this financial burden placed on Ms. Mazorra and other taxpayers in similar situations.

COST ESTIMATE:

Some costs would be incurred in notifying taxpayers, revising returns and applications, answering inquiries and writing appropriate regulations. These costs are expected to be absorbable.

REVENUE ESTIMATE:

The provisions of this bill are not expected to have a revenue impact.

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